their requirements. Money is entrusted to them under those undertakings largely because they are solicitors and are deemed and found to be especially worthy of trust. (*Per* Hamilton J. in *United Mining and Finance Corporation Ltd.* v. *Becher*[2]). An undertaking given by a solicitor is very often the decisive factor in inducing its acceptance. Great care ought therefore to be paid to the wording of an undertaking both by the solicitor giving it and by the person accepting. It must be clearly worded so as to express the intentions of both parties and this is all the more so when the undertaking is given to a person who is not a solicitor. It is for him to consider the probable effect of such instrument before he signs it for the language of an instrument is to be taken most strongly against the party using it. (*Per* Bayley J. in *Burrell* v. *Jones*[3]). The fact that subsequent to the undertaking events occur which alter the position, such as his client withdrawing or changing his instructions before the undertaking has been honoured, will not entitle the solicitor to avoid liability unless he has expressly guarded against those events in the undertaking itself. The standard required is so high that the courts have allowed only one defence, that of mistake.

Now, turning back to the written undertaking (Exhibit D1), apart from what I have said earlier, the words are plain and unambiguous and does not call for any departure from the ordinary rules of interpretation. The intention is clear. When the undertaking is conditional the condition must be fulfilled before the undertaking will be enforced. Further, he ought to have included words which show clearly that he is not accepting personal liability but merely acting as agent of a particular party in the transaction. As a solicitor the respondent ought to have foreseen the consequences of such failure. He cannot now turn back and say he was acting on the instructions of his client. He is the stake-holder and therefore bound by his undertaking.

With regard to the ground that the appeal on the *lis pendens* order is pending in the Federal Court, I am of the opinion that whatever the decision may be will not directly affect the undertaking in the circumstances.

Although I hold that the respondent is liable for the undertaking and in normal circumstances would order him to pay the purchase money to the applicant as prayed, yet in view of the pending civil action in which the applicant is involved as a defendant on a claim by Vesudevan the plaintiff as legal owner of half undivided share of the said land in dispute and in view of a pending application to institute the purchaser, United Realty Sdn. Berhad, as a co-defendant, I have no alternative but to order the respondent to deposit the sum involved into court forthwith. I do so in the interest of justice and in order to safeguard the interest of the plaintiff should he succeed in his claim. The respondent is ordered to pay costs and interest as prayed; the latter to be deposited together with the sum involved.

Order accordingly.

Solicitors: *Skrine & Co.; Jayadeva & Zahir.*

PUBLIC PROSECUTOR v. ABDULLAH BIN PANDAK HASSAN & ANOR.

[R.Cr.J. (Hashim Yeop A. Sani J.) July 15, 1975]
[Ipoh — Criminal Revision No. 16 of 1975]

Criminal Law and Procedure — Revision — Decision of magistrate — Unclear and confused records — Full punishment awarded — Criminal Procedure Code (F.M.S.) s. 176(i) — Subordinate Courts Act, 1948, s. 87 — Courts of Judicature Act, 1964, s. 37.

The defendant and another had during a period of 12 days committed a number of thefts and one house-breaking in the areas of Titi Gantong, Kampong Sadang and Kampong Talang in the vicinity of Parit in the same District of Kuala Kangsar in the course of which various articles ranging from a parang, shoes, clothing and motor-cycle were stolen either by the said defendant himself or jointly with another.

The learned magistrate dealt with all five charges against the defendant on the same day and imposed the following sentences in respect of each of the offences committed by the defendant:

(a) 2 years' imprisonment and a fine of $100 in default 20 days imprisonment for the first charge.

(b) 2 years' imprisonment for the second charge.

(c) 4 years' imprisonment, 3 strokes of the rotan and police supervision for one year in respect of the third charge.

(d) one year's imprisonment in respect of the fourth charge.

The records of the learned magistrate were either confused or unclear and it did not appear clearly which of the sentences were to run concurrently. The learned magistrate did not record his reasons for imposing the full punishment for the offence nor did he transmit the records to the High Court as required by section 37 of the Courts of Judicature Act, 1964 and section 87 of the Subordinate Courts Act, 1948.

The learned Special President, Ipoh, has brought to the court's attention the sentences imposed on the defendant in Parit Arrest Case No. 14 of 1975 with a view to revision.

Held: (1) despite the fact that magistrates are generally over-burdened in their day-to-day administration of justice, sufficient care must be given to the recording of particulars, facts, statements in mitigation by accused persons, sentences and other orders as the magistrate may make and for this purpose time expended would certainly be regarded as well spent;

(2) the format of the Charge Sheet in the form of "Courts 113" was specially designed to achieve the purpose of clarity and magistrates should ensure that the columns at the back of the charge sheet are properly filled to reflect the full records of the proceedings;

(3) additional continuation sheets should be incorporated into the charge sheet only where the notes of evidence or brief facts and other particulars cannot be entered into the charge sheet by reason of insufficient space;

(4) upon imposing the full punishment by virtue of subsection (2) of section 87 of the Subordinate Courts Act 1948 (Revised 1972) it is mandatory for the magistrate to state his reasons in writing. The said provision requires the magistrate, where no appeal has been lodged against the sentence, to transmit the records of the proceedings to the High Court so that the High Court may satisfy itself as to the correctness, legality or propriety or otherwise of the sentence so imposed in exercise of the special powers;

(5) in the circumstances of this case the sentences imposed must be revised.

Cases referred to:-

(1) *Public Prosecutor* v. *Lim Chai Seng & Ors.* [1956] M.L.J. 236.

(2) *Abdul Wahab* v. *Public Prosecutor* [1970] 2 M.L.J. 203.

CRIMINAL REVISION.

Hashim Yeop A. Sani J.: The learned Special President, Ipoh, has brought to my attention the sentence imposed by the learned magistrate on one Abdullah bin Pandak Hassan in Parit Arrest Case No. 14 of 1975 with a view to revision.

On perusing through the records of this case and the connected cases namely, Parit Arrest Cases No. 10 of 1975, 11 of 1975, 12 of 1975 and 15 of 1975 I found that the records are quite confusing in many respects. For the purpose of this revision it is best that a summary of the records of the cases concerned be set out first. It appears that the learned magistrate dealt with all the five cases mentioned above on the same day i.e. on June 2, 1975. The five cases dealt with separate offences of thefts and one for house-breaking by night. In respect of Parit Arrest Cases No. 11 of 1975, 12 of 1975 and 14 of 1975 Abdullah bin Pandak Hassan was charged jointly with another person and in respect of Parit Arrest Cases No. 10 of 1975 and 15 of 1975 Abdullah bin Pandak Hassan was the sole accused. All the charges in the cases mentioned above were in respect of offences committed between March 31, 1975 and April 12, 1975 as follows: —

(a) In Arrest Case No. 10 of 1975 Abdullah bin Pandak Hassan was charged with the offence of house-breaking by night under section 457 of the Penal Code between 12.30 a.m. and 3.00 a.m. on April 2, 1975 at Kampong Sadang, Parit;

(b) In Arrest Case No. 11 of 1975 the same accused with another person were charged with the offence of theft of clothing and shoes worth about $200 belonging to Che Ton bt. Abdul Rahman under section 379 of the Penal Code between 9.30 p.m. on April 11, 1975 and 4.30 a.m. on April 12, 1975 at Kampong Talang, Parit;

(c) In Arrest Case No. 12 of 1975 the same accused with another person were charged with the offence of theft of 1 parang valued at about $5 belonging to one Alang Tajuddin under section 379 of the Penal Code between 11.10 p.m. on April 11, 1975 and 1.45 a.m. on April 12, 1975 at Kampong Talang, Parit;

(d) In Arrest Case No. 14 of 1975 the same accused with another person were charged with the offence of theft of a motor cycle No. AT 872 valued at $1,300 belonging to one Saad bin Abdullah under section 379 of the Penal Code between 10.00 p.m. on March 31, 1975 and 6.00 a.m. on April 1, 1975 at Titi Gantong, Parit;

(e) In Arrest Case No. 15 of 1975 the same accused by himself alone was charged with the offence of theft of a pair of shoes and a motor cassette valued at about $300 belonging to one Ahmad Zahidi under section 379 of the Penal Code between 5.45 p.m. on April 1, 1975 and 5.45 p.m. on April 2, 1975 at Kampong Sadang, Parit.

As on June 2, 1975 the said Abdullah bin Pandak Hassan had two previous convictions namely of criminal intimidation under section 506 of the Penal Code committed in 1966 when he was bound over under section 294(i) of the Criminal Procedure Code and of retaining stolen property under section 411 of the Penal Code in 1973 when he was fined $150 in default 2 weeks' imprisonment.

The sentences imposed by the learned magistrate in respect of the said Abdullah bin Pandak Hassan are respectively as follows: —

(a) *Arrest Case No. 10 of 1975*
Two years imprisonment and a fine of $100 in default 20 days imprisonment.

(b) *Arrest Cases No. 11 of 1975 and 12 of 1975*
Two years imprisonment.

(c) *Arrest Case No. 14 of 1975*
Four years imprisonment, 3 strokes of the rotan and Police supervision for 1 year.

(d) *Arrest Case No. 15 of 1975*
One year imprisonment.

The following aspects of the records of the learned magistrate would seem to be either confused or unclear. Firstly, in respect of the records for Arrest Cases No. 11 of 1975 and 12 of 1975. It should be noted that in respect of Arrest Case No. 11 of 1975 the said Abdullah bin Pandak Hassan and the other person were charged for committing an offence of theft of clothing and shoes valued at about $200 and in respect of Arrest Case No. 12 of 1975 these same persons were charged for the offence of theft of 1 parang valued at about $5. In the records of the magistrate on the brief facts as given by the prosecuting officer the parang was produced as Exhibit P1 and no items of any clothing were produced but only two pairs of ladies shoes and one pair of man's shoes as exhibits P3 and P4. No plea was recorded in respect of Arrest Case No. 11 of 1975. In the record of the learned magistrate pertaining to the sentence no mention is made as to whether the term of imprisonment of two years was also imposed in respect of Arrest Case No. 11 of 1975. Secondly, in respect of Arrest Case No. 14 of 1975 it appears from the records that the learned magistrate also ordered that the sentence imposed in that case was to run concurrently with Arrest Cases Nos. 10 of 1975, 11 of 1975, 14 of 1975 and 15 of 1975 but no mention of Arrest Case No. 12 of 1975.

Many times before magistrates have been exhorted to ensure that the records in criminal proceedings must be made as clearly as possible and I would emphasise that despite the fact that magistrates are generally over-burdened in their day-to-day administration of justice, sufficient care must be given to the recording of particulars, facts, statements in mitigation of accused persons, sentences and other orders as the magistrate may make and for this purpose time expended would certainly be regarded as well spent.

Section 176(i) of the Criminal Procedure Code (F.M.S.) clearly directs the keeping of records and the entering of all necessary particulars in a criminal proceeding in a summary trial by magistrates. The importance of entering all necessary particulars in the records of a criminal proceeding was highlighted in the observation of Thomson J. (as he then was) in *Public Prosecutor* v. *Lim Chai Seng & Ors.*[1] It was also a criminal revision and His Lordship observed:

"Before departing from the cases I would point out that in each case a large number of particulars required to be entered on the charge sheet have not been entered, the most glaring of these omissions being any note of the magistrate's finding. These charge sheets were introduced some years ago to ensure that all necessary particulars relating to criminal proceedings are recorded but this result which is a necessary one will clearly not be attained if magistrates feel themselves at liberty to disregard the requirements of the sheets."

It is clear from the direction in section 176(i) of our Criminal Procedure Code that the court shall keep a record of the particulars of each case by using and completing or causing to be completed the Charge Sheet in accordance with such forms as the Chief Justice may direct and where all necessary particulars cannot be entered on any such form by annexing thereto any requisite number of continuation sheets. Subsection (iii) of that section also requires that such record shall be authenticated by the presiding officer. In respect of all the cases mentioned above in this revision all the Charge Sheets were insufficiently filled whereas too much reliance was placed on the annexing continuation sheets. This is clearly contrary to the direction of subsection (i) of section 176 of the Criminal Procedure Code.

The format of the Charge Sheet in the form of "Courts 113" was specially designed to achieve the purpose of clarity and magistrates are urged to ensure that the columns at the back of the Charge Sheet are properly filled to reflect the full records of the proceeding. I regret to say that this was not done in this case. Additional continuation sheets should be incorporated into the Charge Sheet only where the notes of evidence or brief facts and other particulars cannot be entered into the Charge Sheet by reason of insufficient space.

On the face of the records of the above-mentioned cases it is impossible for any one to see clearly the pleas of the said Abdullah bin Pandak Hassan and the other person Mat Sani bin Bakri entered in regard to the charge in Arrest Case No. 11 of 1975.

I will come now to the sentence imposed by the learned magistrate in respect of Arrest Case No. 14 of 1975. The powers of a First Class Magistrate are set out in section 87 of the Subordinate Courts Act, 1948 (Revised 1972). Subsection (1) of that section provides that a First Class Magistrate may pass any sentence allowed by law *not exceeding* two years imprisonment. Subsection (2) of that section provides that notwithstanding the provision of subsection (1) relating to the actual powers of the magistrate, where a magistrate has convicted any person "and it appears that, by reason of any previous conviction or of his antecedents, a punishment in excess of that prescribed by subsection (1) should be awarded, then (he) may award the full punishment authorised by law for the offence of which the person has been convicted and shall record his reason for so doing." The important words in subsection (2) of section 87 can be found in two limbs namely, *"may award the full punishment authorised by law for the offence"* and *"shall record his reason for so doing."* Since the offence of theft under section 379 carries a maximum sentence of three years imprisonment therefore a term of three years imprisonment *shall be the full punishment* that is *authorised by law for the offence.* I think this was what was also meant by Sharma J. when he said in *Abdul Wahab* v. *Public Prosecutor*[2]:

"In view of the provisions of section 87(2) of the Courts Ordinance I am of the view that the magistrate was empowered to pass the maximum sentence provided under section 457 of the Penal Code."

Upon imposing the full punishment by virtue of subsection (2) of section 87 of the Subordinate Courts Act 1948 (Revised 1972) it is then mandatory for the magistrate to also state his reasons in writing. Another point on section 87(2) is that the requirements of section 37 of the Courts of Judicature Act, 1964 (Revised 1972) must be read in conjunction with section 87(2) of the Subordinate Courts Act. The latter provision deals with the special powers of the Subordinate Courts in West Malaysia. Upon exercising the special powers conferred under that subsection the provision requires the magistrate, where no appeal has been lodged against the sentence, to transmit the records of the proceedings to the High Court so that the High Court may satisfy itself as to the correctness, legality or propriety or otherwise of the sentence so imposed in exercise of the special powers. In the instant case it is regretted that neither the provision of section 87(2) of the Subordinate Courts Act nor section 37 of the Courts of Judicature Act, 1964 has been complied with by the learned magistrate.

It would appear from the records however that the said Abdullah bin Pandak Hassan and the other person had during the said period of twelve days committed a number of thefts and one housebreaking in the areas of Titi Gantong, Kampong Sadang and Kampong Talang in the vicinity of Parit in the same District of Kuala Kangsar in the course of which various articles ranging from a parang, shoes, clothing and motor cycle were stolen either by the said Abdullah bin Pandak Hassan himself or jointly with the other person. Under the circumstances I shall not therefore interfere with the sentences imposed by the learned magistrate except in respect of the following: —

(1) In Arrest Case No. 14 of 1975: having regard to the fact that all the convictions in Arrest Cases Nos. 10 of 1975, 12 of 1975 and 15 of 1975 were recorded on the same day, the following sentences shall be substituted for the sentences imposed by the learned magistrate namely —

(a) in respect of the first accused — imprisonment for two years to run concurrently with the sentences of imprisonment imposed in the other cases;

(b) in respect of the second accused — imprisonment for one year to run concurrently with the sentence of imprisonment imposed in Arrest Case No. 12 of 1975;

(c) the order of whipping imposed on both the first and the second accused shall be set aside but the order for police supervision shall be confirmed.

(2) In Arrest Case No. 11 of 1975: for the reasons mentioned earlier as to the absolute lack of clarity in the records as to the plea of the accused persons and the exhibits, both the convictions and the sentences imposed by the learned magistrate are hereby quashed.

Order accordingly.